

## **CONTRACT AND BOND FORMS**

### **CONTRACT**

Individual Form	00510-2 - 00510-3
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### **PERFORMANCE BOND**

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### **LABOR AND MATERIALS PAYMENT BOND**

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### **ESCROW BID DOCUMENTS**

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NOTE: Bond Forms are not to be filled out when submitting Bid Form.

# MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

## CONTRACT

Clause 1. - This agreement, made this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ in the year two thousand and \_\_\_\_\_ between the Massachusetts Bay Transportation Authority, and \_\_\_\_\_, herein called the Contractor.

Clause 2. - Witnesseth, that the parties to this agreement, each in consideration of the agreements on the part of the other herein contained, do hereby agree, the Massachusetts Bay Transportation Authority for itself, and said Contractor for himself/themselves and his/their heirs, executors, administrators and assigns, as follows:

The Contractor agrees to furnish all equipment, machinery, tools and labor, to furnish and deliver all materials required to be furnished and delivered in and about the improvement and to do and perform all work under

MBTA Contract No. **XXCNXX**, (**Contract Title**) for a sum not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_ )  
based upon a schedule of unit, lump sum and allowance bid prices

in strict conformity with the provisions herein contained and of the Notice to Bidders, Bid Form, Supplementary Conditions, Addenda, and Specifications hereto attached and with plans referred to therein. All Specifications, Supplementary Conditions, Plans, Notice to Bidders, Addenda, and Bid Form are hereby specifically made a part of this contract as fully and to the same effect as if the same had been set forth at length herein.

Clause 3. - In consideration of the foregoing premises the Massachusetts Bay Transportation Authority agrees to pay as full compensation for everything furnished and done by the Contractor under this Contract, including all work required but not shown on the plans for the items herein mentioned, and also for all loss of damage arising out of the nature of the work aforesaid, or from the action of the elements (except as excluded in the General Conditions or the Supplementary Conditions thereto) or from any delay or from any unforeseen obstruction or difficulty encountered in the prosecution of the work, and for all risks of every description in connection with the work, and for all expenses incurred by or in consequence of the suspension or discontinuance of the work as herein specified, and for well and faithfully completing the work, and the whole thereof, as herein provided, such prices as are set out in the accompanying Bid Form and for all work required, for which there is no item in the Bid Form, such compensation as is provided for in the aforesaid Specifications.

In witness whereof, the said Contractor has/have hereto set his/their hands and seals, and the said Massachusetts Bay Transportation Authority has executed these present by its authorized representatives on the year and day above written.

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contractor

**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**

BY:

\_\_\_\_\_  
Phillip Eng  
General Manager and CEO

(Corporation Form)

**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**

**CONTRACT**

Clause 1. - This agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year two thousand \_\_\_\_\_, between the Massachusetts Bay Transportation Authority, and \_\_\_\_\_ herein called the Contractor.

Clause 2. - Witnesseth, that the parties to this agreement, each in consideration of the agreement on the part of the other herein contained, do hereby agree, the Massachusetts Bay Transportation Authority for itself, and said Contractor for itself and its successors and assigns, as follows:

The Contractor agrees to furnish all equipment, machinery, tools and labor, to furnish and deliver all materials required to be furnished and delivered in and about the improvement and to do and perform all work under

MBTA Contract No. **XXCNXX**, (**Contract Title**) for a sum not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_ ) based upon a schedule of unit, lump sum and allowance bid prices

in strict conformity with the provisions herein contained and of the Notice to Bidders, Bid Form, Supplementary Conditions, Addenda, and Specifications hereto attached, and with the plans referred to therein. All plans, Specifications, Supplementary Conditions, Notice to Bidders, Addenda, and Bid Form are hereby specifically made a part of this contract as fully and to the same effect as if the same had been set forth at length herein.

Clause 3. - In consideration of the foregoing premises the Massachusetts Bay Transportation Authority agrees to pay and the Contractor agrees to receive as full compensation for everything furnished and done by the Contractor under this contract, including all work required but not shown on the plans for the items herein mentioned, and also for all loss or damage arising out of the nature of the work aforesaid, or from the action of the elements (except as excluded in the General Conditions or the Supplementary Conditions thereto) or from any delay or from an unforeseen obstruction or any difficulty encountered in the prosecution of the work, and for all risks of every description connected with the work, and for all expenses incurred by or in consequence of the suspension or discontinuance of the work as herein specified, and for well and faithfully completing the work, and the whole thereof, as herein provided, such prices as are set out in the accompanying Bid Form, and for all work required, for which there is no

item in the Bid Form, such compensation as is provided for in the aforesaid Specifications.

In witness whereof, the said Contractor has caused these presents to be signed in its name and behalf and its corporate seal to be hereto affixed by

\_\_\_\_\_Its\_\_\_\_\_

and \_\_\_\_\_ its\_\_\_\_\_

thereto duly authorized, and the said Massachusetts Bay Transportation Authority has executed these presents by its authorized representatives on the year and day above written.

By:\_\_\_\_\_

\_\_\_\_\_Contractor

\_\_\_\_\_

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
BY

\_\_\_\_\_  
Phillip Eng  
General Manager and CEO

## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that \_\_\_\_\_  
(Insert full name and address and legal title of Contractor)

\_\_\_\_\_  
as Principal, hereinafter  
called Contractor, and \_\_\_\_\_

\_\_\_\_\_  
(Here insert full name and address or legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto Massachusetts Bay Transportation Authority as Obligee, hereinafter called Authority, in the amount of Dollars (\$ \_\_\_\_\_ ) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Contractor has by written agreement entered into a contract with the Authority for MBTA Contract No. \_\_\_\_\_ which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Authority.

Whenever Contractor shall be, and is declared by the Authority to be in default under the Contract, the Authority having performed Authority's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

- 1) Complete the Contract in accordance with its terms and conditions, or
- 2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Authority elects, upon determination by the Authority and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the Authority, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by the Authority to Contractor under the Contract

and any amendments thereto, less the amount properly paid by the Authority to Contractor.



Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Authority or the heirs, executors, administrators or successors of the Authority.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

WITNESS:

PRINCIPAL:

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Title)

WITNESS:

SURETY:

\_\_\_\_\_  
(Seal)

\*\_\_\_\_\_  
(Title)

**\*Attach hereto proof of authority of officers or agents to sign bond.**

## LABOR AND MATERIALS PAYMENT BOND

Know all men by these presents, that \_\_\_\_\_  
\_\_\_\_\_ as principal, and \_\_\_\_\_  
\_\_\_\_\_ as surety,  
are held and firmly bond unto the Massachusetts Bay Transportation Authority (MBTA)  
in the sum of  
\$ \_\_\_\_\_  
lawful money of the United States of America, to be paid to the MBTA, for which  
payments, well and truly to be made, we bind ourselves, our respective heirs,  
executors, administrators, successors and assigns, jointly and severally, firmly by these  
presents.

Whereas, the said principal has made a contract with the MBTA for the construction  
of MBTA Contract No. \_\_\_\_\_ Now the  
condition of this obligation is such that if the principal and its subcontracts shall pay for  
all labor performed or furnished and for all materials and equipment used or employed  
in said contract and in: any and all duly authorized modifications, alterations,  
extensions, changes or additions thereto, all as set forth in Massachusetts General  
Laws, Chapter 149 Section 29 and Chapter 30 Section 39A, then this obligation shall  
become null and void; otherwise it shall remain in full force and virtue, the rights and  
obligations of the principal, the surety and claimants being as set forth in said M.G.L. c.  
149 § 29.

The surety hereby stipulates and agrees that no change or modification in, or  
extension of time, or alterations or additions to the contract or in the work shall in any  
way affect its obligations on this Bond and does hereby waive notice of any such  
change, modification, extension, alteration or addition.

In witness whereof we hereunto set our hands and seals this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Print Name of General Contractor/ Principal)

By: \_\_\_\_\_  
(Signature - Title)

\_\_\_\_\_  
(Print Name of Surety) (Seal)

By : \_\_\_\_\_  
(Signature - Title)

Business Address \_\_\_\_\_

Countersigned MA Resident Agent by \_\_\_\_\_  
\_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_

**Attach herewith proof of authority of officers or agents to sign the bond.**

NTS: The Specifier shall consult with Contract Services, and obtain approval, prior to inclusion of this article. This provision is for projects over \$1,000,000.
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## **SECTION 00510 ESCROW BID DOCUMENTS**

### **THE REQUIREMENTS**

#### **A. Scope**

1. The purpose of this specification is to preserve the bid documents of the successful bidder (Contractor) for use by the parties in any claims, change orders, or litigation between the Authority and Contractor arising out of this contract.
2. The low bidder shall submit one (1) legible copy of all documentary information including, but not limited to, electronic files generated in preparation of bid prices for this project. This material is hereinafter referred to as "Escrow Bid Documents." The term "Escrow Bid Documents" as used in this specification means all writings, working papers, computer print outs, charts, and all other data compilations which contain or reflect information, data and calculations used by the Contractor to determine the bid in bidding for this project. The term "Escrow Bid Documents" also includes any manuals which are standard to the industry used by the Contractor in determining the bid to this project. Such manuals may be included in the bid documentation by reference. Such reference shall include the name and date of the Publication and the Publisher. The term does not include bid documents provided by the Authority for use by the Contractor in bidding on this project.
3. The low bidder shall certify that the Escrow Bid Documents constitute all of the information used in preparation of the Bid, and that no other bid preparation information shall be considered in resolving disputes or claims. The successful bidder also agrees that nothing in the Escrow Bid Documents shall change or modify the terms or conditions of the Contract Documents. In the event the Contractor omits information used in estimating its costs for the bid, then the Contractor will forfeit the ability, in connection with any claim, change, or litigation, to prove what it carried in its bid for the cost of the relevant item of work for which the information was omitted. For example, if the contractor has a claim for labor or material escalation and it omits from the Escrow Bid Documents the worksheets it prepared or the supplier quotes it received for the labor or materials for which escalation is claimed, then the Contractor will be precluded from presenting evidence of what it actually carried in its bid for labor or material.

**B. Submittal of Escrow Bid Documents**

1. The Escrow Bid Documents are to be submitted to the following Escrow Agent:

ATTN:

Robinson & Cole LLP  
One Boston Place, Suite 2500  
Boston, Ma 02108  
Attn: Matthew Lawlor, Esquire  
Phone: (617) 557-5948

2. The low bidder will be required to execute an escrow agreement with the Authority and the Escrow Agent in the form attached as Exhibit 3. The low bidder shall submit a signed Escrow Agreement in triplicate and the Escrow Bid Documents to the Escrow Agent in a sealed container acceptable to the Escrow Agent, no later than five business days following the Notice of Award. 24-hour advance notice to the Escrow Agent is required prior to submitting the Escrow Bid Documents. The construction contract will not be executed until the Bid Documentation Certification (Exhibit 1) and the Bid Documentation Delivery Certification (Exhibit 2) has been delivered as set forth in section B.3. The container shall be clearly marked "Bid Documentation" and shall also show on the face of the container the Contractor's name, the date of submittal and the Contract Number. Compliance with the provisions of Section 00510 is within the discretion of the Authority.
3. The bidder shall obtain certification from the Escrow Agent in the form attached as Exhibit 2 and will deliver that acknowledgement and a copy of the Bid Documentation Certification form (Exhibit 1) to the Authority within said 5 days.
4. The Escrow Bid Documents shall be accompanied with the certification (attached as Exhibit 1) signed by an individual authorized by the Bidder to execute Bids, stating that the material in the Escrow Bid Documents constitutes all the documentary information used in preparation of the Bid and that the Bidder has personally examined the contents of the Escrow Bid Documents container and has found that the documents in the container are complete and meets the requirements of this Section 00510.

**C. Ownership**

1. The Escrow Bid Documents are, and shall always remain, the property of the Contractor, subject to joint review by the Authority and the Contractor as provided herein. The Escrow Bid Documents are proprietary and secret information belonging to the Contractor.
2. The Authority stipulates and expressly acknowledges that the Escrow Bid Documents, as defined herein, constitute trade secrets. This acknowledgement is based on the Authority's express understanding that the information contained in the Escrow Bid Documents is not known outside the Bidder's business, is known only to a limited extent and only to a limited number of employees of the Bidder, is safeguarded while in the Bidder's possession, is extremely valuable to the Bidder and could be extremely valuable to the Bidder's competitor by virtue of it reflecting the Bidder's contemplated techniques of construction. The Authority acknowledges that the Bidder expended substantial sums of money in developing the information included in the Escrow Bid Documents and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. The Authority further acknowledges that the Escrow Bid Documents include a compilation of information used in the bidder's business, intended to

give the Bidder an opportunity to obtain an advantage over competitors who do not know of or use the contents of the documentation. The Authority further agrees to safeguard the Escrow Bid Documents, and all information contained therein, against disclosure to the fullest extent permitted by law.

**D. Purpose**

1. The purpose of the Escrow Bid Documents procedure is intended to create a spirit of cooperation in an atmosphere of honesty between the Authority and the Contractor.
2. Escrow Bid Documents will be used to assist in the negotiation of price adjustments and Change Orders and in the settlement of disputes and claims. They will not be used for pre-award evaluation of the contractor's anticipated methods of construction or to assess the contractor's qualifications for performing work.

**E. Format and Content**

1. Bidders may submit Escrow Bid documents in their usual cost estimation format; provided that all information is clearly presented and ascertainable. It is not the intention of this Article to cause the Bidder extra work during the preparation of the Bid, but to ensure that the Escrow Bid Documents will be adequate to enable complete understanding and proper interpretation for their intended use. The Escrow Bid Documents shall be in English.

**F. Not used.**

**G. Payment:**

There will be no separate payment for compilation of the data, container or cost of verification of the Escrow Bid Documents. All costs shall be included in the overall Contract bid price.

**H. Storage**

The Escrow Bid Documents of the successful low bidder will be placed in escrow for the life of the Contract with the Escrow Agent. The cost of storage will be paid by the Authority.

**I. Examination**

1. The Escrow Bid Documents shall be examined by both the Authority and the Contractor, at any time deemed necessary by the Authority and/or the Contractor; provided, however, that the Escrow Bid Documents may only be examined for the purpose of determining the costs carried in the Contractor's bid for those specific items of work that are the subject of negotiation of price adjustments and Change Orders or the settlement of disputes and claims. No other documents may be examined. The Authority may delegate review of relevant Escrow Bid Documents to members of its construction management staff and/or consultants.
2. Examination of the Escrow Bid Documents is subject to the following conditions:

- a. As trade secrets, the Escrow Bid Documents are proprietary and confidential to the extent provided by law.



- b. Access to the Escrow Bid Documents may take place only in the presence of duly designated representatives of both the Authority and the Contractor. The AUTHORITY and CONTRACTOR shall provide written direction signed by the AUTHORITY and CONTRACTOR to the ESCROW AGENT directing that the Escrow Bid Documents be made available for such joint examination. The Authority or the Contractor shall give at least 5 business days written notice to the other's project manager of its request to examine the Escrow Bid Documents. Refusal by Contractor to be present or to cooperate in any way in the review of the documents after the provision of the written notice by the Authority, will be the basis for the Authority to reject the claim.
3. The Escrow Bid Documents at all times remain the property of the Contractor and the Authority will take all reasonable steps necessary to protect confidentiality to the fullest extent permitted by law.
4. The Authority agrees to notify the Contractor of its receipt of any request made pursuant to M.G.L.c.66§10 to inspect or examine any material contained in the Escrow Bid Documents.

J. Final Disposition

The Escrow Bid Documents will be promptly returned to the Contractor by the Escrow Agent when all of the following have occurred: all disputes regarding the contract work have been settled, the contract work completed and Final Payment has been made and accepted. The AUTHORITY and the CONTRACTOR shall provide joint written confirmation of the above to the ESCROW AGENT to allow the ESCROW AGENT to release the Escrow Bid Documents.

Exhibit 1

BID DOCUMENTATION CERTIFICATION

THE UNDERSIGNED HEREBY CERTIFIES THAT THE BID DOCUMENTATION CONTAINED HEREIN CONSTITUTES ALL OF THE INFORMATION USED IN PREPARATION OF THE BID; THAT NO OTHER BID PREPARATION INFORMATION SHALL BE CONSIDERED IN RESOLVING DISPUTES OR CLAIMS; AND THAT I HAVE PERSONALLY EXAMINED THESE CONTENTS AND HAVE FOUND THAT THIS BID DOCUMENTATION IS COMPLETE AND MEET THE REQUIREMENTS OF SECTION 00510.

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

CONTRACT NO. \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

DATE: \_\_\_\_\_

## EXHIBIT 2

### Bid Documentation Delivery

#### ---- CERTIFICATION ----

ROBINSON & COLE LLP, as ESCROW AGENT, identified in Massachusetts Bay Transportation Authority Contract No. \_\_\_\_, hereby certifies that \_\_\_\_\_

[NAME OF BIDDER]

as identified by \_\_\_\_\_ [REPRESENTATIVE OF BIDDER]

has delivered to ESCROW AGENT's office for storage, a sealed container which BIDDER represents to be all documentation used in the preparation of BIDDER's bid, otherwise known as the "Escrow Bid Documents," as BIDDER represents it is required to do in accordance with the Contract Documents of the above referenced Contract, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ROBINSON & COLE LLP

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

### Exhibit 3

#### ESCROW AGREEMENT

This **ESCROW AGREEMENT** (this “Agreement”) is dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among the **MASSACHUSETTS BAY TRANSPORTATION AUTHORITY** (the “**MBTA**” or the “**AUTHORITY**”); \_\_\_\_\_ (“**BIDDER**”); and **Robinson & Cole LLP** as Escrow Agent (“**ESCROW AGENT**”).

#### RECITALS

**WHEREAS**, the **AUTHORITY** is a public body politic and corporate and political subdivision of the Commonwealth of Massachusetts created by Chapter 161A of the Massachusetts General Laws, as amended, which is presently engaged in a competitive bidding process governed by law to award a construction contract to the lowest responsible and eligible bidder for a construction project entitled \_\_\_\_\_ (the “Contract”); and

**WHEREAS**, **BIDDER** has submitted a bid on the Contract and is the low bidder therefore; and

**WHEREAS**, Section 00510 of the documents for the Contract (the “Contract Documents”) requires the low bidder to submit, within five business days following the Notice of Award, one copy of all documentary information generated in preparation of bid prices for the Contract, which information is hereinafter referred to as “Escrow Bid Documents,” to **ESCROW AGENT** together with a certification in the form contained in the Contract Documents; and

**WHEREAS**, **ESCROW AGENT**, for stated consideration, is willing to assume the obligations of **ESCROW AGENT** as agreed herein;

**NOW, THEREFORE**, for consideration mutually acknowledged, the **AUTHORITY**, **BIDDER** and **ESCROW AGENT** hereby agree as follows:

1. Escrow of Bid Documents. **BIDDER** shall comply with the provisions of Section 00510 of the Contract Documents by delivering a complete copy of the Escrow Bid Documents to **ESCROW AGENT** in a sealed container acceptable to the Escrow Agent within the required time limit and otherwise complying with Section 00510 of the Contract Documents together with the required Bid Documentation Certification (Exhibit 1 of Section 00510). **BIDDER** will receive from **ESCROW AGENT** a Bid Documentation Delivery Certification (Exhibit 2 of Section 00510) at the time **BIDDER** delivers the Escrow Bid Documents to **ESCROW AGENT**. **BIDDER** will deliver an original of **ESCROW AGENT**’s Bid Documentation Delivery Certification and a copy of **BIDDER**’s Bid Documentation Certification to the **AUTHORITY** within the required time limit.

2. Protection of Bid Documents. The **AUTHORITY** shall comply with the provisions of Section 00510 of the Contract Documents regarding receipt, storage, and use of the Escrow Bid Documents and will safeguard the Escrow Bid Documents and all information contained therein against disclosure to the fullest extent permitted by law.

3. Holding of Bid Documents by ESCROW AGENT. **ESCROW AGENT** is hereby expressly authorized and agrees to receive, store, safeguard, release, and return the

Escrow Bid Documents during the duration of the Contract as set forth in this Agreement..

4. Return/Release of Bid Documents. ESCROW AGENT is expressly authorized to release the Escrow Bid Documents only under the following circumstances:

(a) In order to return the Escrow Bid Documents to BIDDER if the AUTHORITY informs ESCROW AGENT in writing that BIDDER and the AUTHORITY have not executed the Contract; or

(b) For joint examination by the AUTHORITY and BIDDER after delivery of a written direction signed by both the AUTHORITY and BIDDER; or

(c) For return to BIDDER when ESCROW AGENT has received joint written confirmation from the AUTHORITY and BIDDER that all of the following have occurred: all disputes regarding the Contract work have been settled, the Contract work completed and Final Payment has been made and accepted; or

(d) Upon joint written direction from the Authority and Bidder, either under such circumstances as is provided for in Section 00510 of the Contract Documents, or as otherwise directed by mutual agreement of the AUTHORITY and BIDDER, which direction shall be delivered in writing by the AUTHORITY, signed by both parties, to ESCROW AGENT.

5. ESCROW AGENT's Obligations and Protection. AUTHORITY and BIDDER further acknowledge and agree as follows:

(a) That ESCROW AGENT (i) shall not be responsible for any of the agreements referred to herein but shall be obligated only for the performance of such duties as are specifically set forth in this Escrow Agreement; (ii) shall not be obligated to take any legal or other action hereunder which might in its judgment involve any expense or liability unless it shall have been furnished with acceptable indemnification; (iii) may rely on and shall be protected in acting or refraining from acting upon any written notice, instruction, instrument, statement, request or document furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper person, and shall have no responsibility for determining the authenticity or accuracy thereof; and (iv) may consult counsel satisfactory to it, including counsel internal to ESCROW AGENT, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion of such counsel.

(b) That neither ESCROW AGENT nor any of its partners, officers, or employees shall be liable to anyone for any action taken or omitted to be taken by it or any of its partners, officers, or employees hereunder except in the case of gross negligence or willful misconduct. The AUTHORITY and BIDDER, jointly and severally, covenant and agree to indemnify ESCROW AGENT and hold it harmless without limitation from any loss, liability, or expense of any nature incurred by ESCROW AGENT arising out of or in connection with this Agreement or with the administration of its duties hereunder, including but not limited to legal fees and other costs and expenses of defending or preparing to defend against any claim or liability unless such loss, liability, or expense shall be caused by ESCROW AGENT's willful misconduct or gross negligence. In no event shall ESCROW AGENT be liable for indirect, special, or consequential damages.

Notwithstanding any provision of this Agreement to the contrary, ESCROW AGENT'S liability shall be limited to the value of its compensation hereunder.

(c) That the AUTHORITY shall pay or reimburse ESCROW AGENT for any legal fees incurred by ESCROW AGENT in connection with the preparation of this Agreement and in addition compensate ESCROW AGENT for its services hereunder in accordance with the Revised Estimate for MBTA Bid Escrow Agent Services dated December 18, 2009. ESCROW AGENT shall be entitled to reimbursement on demand for all expenses incurred in connection with the administration of the escrow created hereby which are in excess of its compensation for normal services hereunder, including without limitation, payment of any legal fees incurred by ESCROW AGENT in connection with resolution of any claim by any party hereunder.

(d) That ESCROW AGENT may at any time for any reason or for no reason resign as ESCROW AGENT hereunder by giving sixty (60) days prior written notice of resignation to AUTHORITY and BIDDER. Prior to the effective date of the resignation as specified in such notice, AUTHORITY will issue to ESCROW AGENT a written instruction authorizing redelivery of the Escrow Bid Documents to another escrow agent that AUTHORITY selects subject to the reasonable consent of BIDDER. If, however, AUTHORITY shall fail to name such a successor escrow agent within forty (40) days after the notice of resignation from ESCROW AGENT, BIDDER shall be entitled to name such escrow agent within twenty (20) days. If no successor escrow agent is named by AUTHORITY or BIDDER within said sixty (60) day period, ESCROW AGENT may apply to a court of competent jurisdiction for appointment of a successor escrow agent.

(e) That ESCROW AGENT's service as escrow agent under this Agreement shall not be construed as constituting legal representation of either AUTHORITY or BIDDER and both AUTHORITY and BIDDER expressly acknowledge, with reference to the rules of professional conduct governing lawyers that ESCROW AGENT's service hereunder is not intended to prevent either the AUTHORITY or BIDDER from retaining ESCROW AGENT as its counsel in any matter, nor shall it be asserted by the AUTHORITY or BIDDER as grounds for disqualifying ESCROW AGENT from representing any client in a matter in which the AUTHORITY's and/or BIDDER's interests are directly adverse to or otherwise different from those of ESCROW AGENT's client. ESCROW AGENT will not knowingly disclose to any such client directly adverse to AUTHORITY and/or BIDDER any confidential information about AUTHORITY and/or BIDDER which ESCROW AGENT has acquired or will acquire pursuant to its services provided in accordance with this Agreement.

(f) That it is the intent of BIDDER and the AUTHORITY that the Escrow Bid Documents remain the sole property of BIDDER.

(g) That the AUTHORITY's maximum obligation under this Agreement is \$15,000. In the AUTHORITY's discretion, the maximum obligation may be increased by written agreement signed by the AUTHORITY and ESCROW AGENT.

6. Dispute Resolution. It is understood and agreed that should any dispute arise with respect to the delivery, ownership, right of possession, access to and/or disposition of the Escrow Bid Documents, or should any such claim be made upon such documents by a third party, ESCROW AGENT upon receipt of written notice of such dispute or claim by the parties hereto or by a third party, is authorized and directed to retain in its possession without liability to anyone, all or any of said Escrow Bid Documents until such dispute shall have been settled either by the mutual agreement of the parties involved or by a final order, decree, or judgment of a court of the United States of America, the time for perfection or any appeal of such order, decree, or judgment having expired. At any time after the ESCROW AGENT becomes aware of a dispute or claim or at any time after one year after the contract completion date in the Contract, ESCROW AGENT may, but shall be under no duty whatsoever to, after thirty days prior written notice to the AUTHORITY and BIDDER, institute or defend any legal proceedings related to the Escrow Bid Documents, including without limitation, commencement of an action in the nature of an interpleader in a court of competent jurisdiction, after depositing the Escrow Bid Documents therewith, for a determination of the respective rights of the AUTHORITY and BIDDER, and, in such case, recover from the AUTHORITY, ESCROW AGENT's costs and expenses including reasonable attorneys' fees .

7. Consent to Jurisdiction and Service. AUTHORITY and BIDDER hereby absolutely and irrevocably consent and submit to the jurisdiction of the courts of the Commonwealth of Massachusetts and of any Federal court located in said Commonwealth in connection with any actions or proceedings brought against AUTHORITY and BIDDER brought by ESCROW AGENT arising out of or relating to this Escrow Agreement. In any such action or proceeding, AUTHORITY and BIDDER hereby absolutely and irrevocably agree that the service thereof may be made by certified or registered mail directed to AUTHORITY or BIDDER, as the case may be, at their respective addresses in accordance with Section 9 hereof.

8. Force Majeure. Neither AUTHORITY nor BIDDER nor ESCROW AGENT shall be responsible for delays or failure in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, earthquakes or other disasters.

9. Notices. Any notice permitted or required hereunder shall be deemed to have been duly given if delivered personally or if mailed certified or registered mail, postage prepaid, to the parties at their addresses set forth below or to such other address as they hereafter designate.

If to AUTHORITY:

Massachusetts Bay Transportation Authority  
77 Franklin Street  
Boston, MA 02110  
Attention: Deputy Chief of Contract Services  
with a copy to MBTA Project Manager for the Contract

If to BIDDER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

If to ESCROW AGENT:

Robinson & Cole LLP  
One Boston Place, Suite 2500  
Boston, MA 02108  
Attention: Matthew J. Lawlor, Esq.

10. Binding Effect. This Agreement shall be binding upon the respective parties hereto and their heirs, executors, successors, and assigns.

11. Modification/Termination. This Agreement may not be altered, modified, or terminated without the express written consent of the parties hereto. No course of conduct shall constitute a waiver of any of the terms and conditions of this Agreement, unless such waiver is specified in writing, and then only to the extent so specified. A waiver of any terms and conditions of this Agreement on one occasion shall not constitute a waiver of the other terms of this Agreement, or of such terms and conditions or any other occasion.

12. Governing Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Massachusetts.

13. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of such counterparts shall together constitute but one and the same instrument.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first written above.

AUTHORITY  
MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Deputy Chief of Contract  
Services

BIDDER

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ESCROW AGENT

ROBINSON & COLE LLP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_